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No. 730

# Supreme Court of the United States

OCTOBER TERM, 1946

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L. W. REIGEL,

*Petitioner,*

v.

GEORGE M. HARRISON, Individually and as Grand President of the Grand Lodge, etc., et al,

*Respondents.*

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## REPLY BRIEF FOR PETITIONER

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## REPLY BRIEF FOR PETITIONER

Respondents' brief under I (pp. 1-2) erroneously:

(1) states the question presented by this record,

(2) asserts the question concerns no one but petitioner,

(3) maintains the convention can give petitioner complete relief or, if it decides against him, the courts will then be open to redress any wrong he can establish, and

(4) avers his action is premature.

As to their (1) (the question presented):

(a) Their brief (p. 2) terms Reigel "a union officer," and refers to his having been suspended by the "chief executive officer. . . ." But, Harrison and Reigel were both elected and served as "Grand Lodge Officers" (Constitu-

tion, Article 10, Sec. 1, p. 22; Article 19, Sec. 1, p. 47; Sec. 8, p. 50; Sec. 12, p. 51; Sec. 13, p. 52). The constitution is the "Constitution of the Grand Lodge" (p. 3), the sovereign body (Preamble p. 2, and Article 2, Sec. 2, p. 4). While there is (*1*) a "Constitution of the Grand Lodge," there are (*2*) Statutes for the Government of Lodges (id. p. 73) and (*3*) Protective laws of the Brotherhood (Article 5, Sec. 1, pp. 5 and 92) and different officers for each of the three. Reigel was not an officer of a local lodge, nor a system Board officer under the protective laws.

In the constitution, there is no power in the Grand Lodge President to suspend a Grand Lodge Vice President from his office, much less to expel him and to forfeit it in the guise of suspension.

Respondents' brief (p. 4 bot.) quotes and italicizes erroneously Article 13, Sec. 11(a) relating to the Grand President's power to suspend a "member." The correct quotation is (p. 28):

> "or conduct unbecoming an officer or member of the Organization." (i. e. of the Brotherhood, Art. 1, Sec. 1, p. 3)

The same mistaken statement appears, though pointed out in our briefs and in the petition for rehearing below (R. 180), on their brief (p. 12) referring to "an officer or member of the organization." An "officer . . . of the Organization" [Sec. 11(a), p. 28] is not a Grand Lodge officer.

(b) Respondents' statement of the supposed question involved omits each of the following matters inherent in it:

That an alleged basis for suspension and forfeiture of Reigel's office was (R. 159) charges and intemperate attacks by Reigel against and abuse of the President. For a Grand President to oust a Vice Grand President for supposed unjust attacks and charges by the latter against him and to offer a hearing before himself thereafter is not

"due process." The Grand President purported to suspend Reigel under Article 13, Sec. 11(a), p. 28. But, power to discipline a "Grand Lodge officer" is specifically lodged in the Board of Advocates (Art. 19, Sec. 7, p. 50, id. Sec. 12, p. 52), and only that Board under Sec. 13, p. 52, may expel a Grand Lodge officer from "membership in the Brotherhood." Power to punish by "reprimand, suspension or expulsion from the Brotherhood" for filing unjust charges against a Grand Lodge officer is expressly reposed in that Board (Art. 19, Sec. 12, p. 52).

Reigel, in filing charges against Harrison and Ziegler, was within his constitutional rights, and subject only to punishment for filing false or frivolous charges (Const., id. p. 51) by a Board of Advocates. But Harrison suspended and forfeited Reigel's office for filing these charges and the respondents and trustees concurred in Harrison's illegal action. The charges were filed by Reigel July 7, 1945 (Defendants' Exhibit E-1, minutes Board of Trustees, p. 55), before July 16 when the trustees, at Harrison's instigation, started a supposed investigation of Reigel's accounts. [For examples of their perfidy (though irrelevant) see Defendants' Exhibit E, pp. 71, 73, 74]. Part of Reigel's charges against Harrison and Ziegler was that they had protected one Keenan, who had misappropriated funds (id. 56b). Reigel's charges against Harrison (id. 59) included: 1(a), failing to be impartial; 1(d), discrimination against Reigel; 2(a), curtailing the activities of Reigel; 3(a), denying freedom of speech; 3(b), coercing and threatening to frame Reigel. (See letters of February 3, 1945, and following.)

Harrison and Ziegler refused to act on these charges as required by Article 19 (id. p. 53, letter July 18, 1945). The Trustees then refused to act, although required by the constitution to do so, on these charges or to set up a Board of Advocates (id. 61). On July 27, Reigel wrote the Trustees demanding they take steps to form such a Board to hear

the charges (id. 68), and he made a similar demand on August 2, 1945 (id. 109).

On August 15, the Trustees refused to set up a Board (Defendants' Exhibit E-3, 116, and fourth page from end, unnumbered) and made their report to Harrison (Defendants' Exhibit E-3, p. 116).

Harrison's suspension letter to Reigel of August 15, 1945 (Plaintiff's Exhibit 11), includes:

> "4. . . . making intemperate attacks upon and untrue accusations against the Grand President . . . before the various General Chairmen in meeting in Atlanta, Georgia, on May 14, 1945.
>
> "5. . . . abuse and threats of personal violence to intimidate the Grand President and Grand Secretary-Treasurer, and by abuse of the members of the Grand Lodge Board of Trustees to prevent or subvert . . . investigations and exposures of your misconduct. . . ."

For additional record references showing the above, see Amended and Supplemental Complaint [R. 95, par. 12(d), 38, Plaintiff's Exhibit 7, 31-2, 64-5, 101, 159, 172(f)].

The Council, on Reigel's separate appeal to them from the above illegal refusal to set up a Board and to file as required by Art. 19, Sec. 11 (p. 51), with that Board the charges made by Reigel against the President, Secretary-Treasurer and Trustees, at the same session in which they overruled Reigel's appeal from suspension, overruled his separate appeal on failure to set up a Board and to file his charges with it.

Neither the opinion of the court below nor the brief in opposition here contains a word on this crucial aspect of the case.

(c) Respondents say Reigel appealed to the convention "as provided in the union constitution. . . ." (Br. p. 2.) Omitted is the fact that he was denied right to appeal as

a Grand Lodge officer "as provided in the union constitution" from a decision of the Board of Advocates, because of the refusal by Harrison, et al., to set up such a Board.

Omitted, also, is a statement of the circumstances under which Reigel took his appeal as a member, i. e., only after his application for a preliminary injunction was not heard; without prejudice to his rights in the litigation, etc., and asserting time necessities for taking appeal then and lack of due process in the convention procedure (R. 96).

Against undisputed facts showing the total irrelevancy of Reigel's appeal as a *member* to the convention and the complete inadequacy of any substantial remedy afforded thereby, nothing is adduced by our opponents but the finding of the District Court, affirmed by the opinion of the Court of Appeals. When the latter court said (R. 156):

> "All the findings of the district court are supported by substantial evidence, and certainly cannot be said to be clearly erroneous. Wherefore, the findings are accepted here."

it was relying only on the constitution, if the report of the trustees, which has no bearing on the question involved, and was rightly objected to as immaterial and irrelevant (R. 101), is omitted. The defendants won on motion to dismiss after plaintiff's case was closed. They offered no evidence at all except the slight evidence offered by them

> "in support of the defendants' previous motion to dismiss the complaint. . . ." (R. 99, 101.)

The proceedings in connection with the trial court's findings (R. 122-134) show our objections to them, such as, claim of irrelevancy of the trustee proceedings (R. 122), asserted denial of due process "for the person who is himself under attack to select the Board which will try the case.

. . ." (R. 122 bot. 123), possibility of the convention postponing report of the Committee on Appeals, inability to run for the office of Vice President again and likely contention of lack of eligibility (R. 123); the omission, if trustee proceedings were to be included, of the perfidious nature of these proceedings (R. 124 bot. 5), objection that it was a committee appointed by Harrison and not the convention which would hear the appeal (R. 130), objection that relief, if any was given, would come too late (R. 133). While at the hearing on the findings, in answer to these objections, the following occurred (R. 133):

> "Judge Marx: It is all in the constitution and whatever argument can be made from the constitution, can be made.
>
> ". . . .
>
> "The Court: As I see it, you will have the right, in the Court of Appeals, to bring up all those matters by argument.
>
> "Mr. Seasongood: I think so; I think, also, because so much depends upon the constitution that the ordinary rule that the findings of the Court are almost (always accepted *sic*) acceptable, wouldn't prevail; it is an interpretation of the constitution.
>
> "The Court: You can bring all those matters up in argument."

the contrary is now argued in respondents' brief (p. 3 and note 1).

(d) It is said the appeal will "shortly be heard." From the date Reigel was ousted, August 15, 1945, and from the date his appeals to the Council were overruled in October, 1945, to the end of May, 1947, is more than a year and a half. To him, ousted from elective office for that period, the time before which his appeal could be heard is not

"short." Neither is the five months even now remaining before the Convention assembles.

It is stated Reigel resorted to the courts "for injunctive reinstatement . . . and before exhausting his remedies within the organization, . . ." Twice Reigel moved for a preliminary injunction (R. 6, 7, 61, 62), with affidavits in support (R. 7, 62), and once for a judgment by default (R. 9). He never succeeded in getting a hearing on any of these applications, which were to prevent interference with the enjoyment of his office pending the litigation. In both complaint and amended and supplemental complaint (R. 6, 98) is prayer for final general relief. The court could, therefore, have enjoined interference with Reigel's office either permanently or until a Board of Advocates had been set up and final decision had.

We deny that Reigel had not exhausted his remedies within the organization as a Grand Lodge officer before filing suit; for, previously he had unsuccessfully demanded of respondents and of the Council, by appeal, his rights as an officer, i. e., hearing on his charges and on charges against him, a Board, and any forfeiture of his office only by that Board.

In answer to their (2), (supposed private nature of the suit) we repeat the question here concerns not only petitioner, but all the various officers of the three different classes and also the members of the Brotherhood, and all unions, clubs, fraternal and religious unincorporated associations. First, is to be noted that the right to serve during term in elective office is at issue, not mere right to recover a sum of money as benefits, where delay could be compensated. It is of vital concern to unions and to everyone interested in them and other unincorporated associations whether controlling officers may disregard constitutions or governing articles without possibility of effective court relief against despotic action.

Second, the union involved is not a private organization. It is given an official status as an agency of the United States under the Railway Labor Act (45 U. S. C. A. Sec. 151, Sixth, et seq.), having been designated as the collective bargaining agent and for the handling of grievances for employees in connection with the National Adjustment Board [id. Sec. 153(a)]. (Exh. 1, Protective laws, 94-100. See, also, par. 17, Am. Supp. Cplt., R. 97-98 and Reigel's redirect, R. 51-52).

In *Betts et al.* v. *Easley, et al.*, 161 Kans. 459; 169 Pac. (2d) 831, rehearing denied June 8, 1946, after this cause was argued and submitted in the court below (R. 151), the fourth paragraph of the reporter's syllabus is that constitutional guarantees of due process are to be liberally construed to effectuate their purposes and are a restraint on all administrative and ministerial officials who act under governmental authority. The fourth paragraph of the court's syllabus (the same as paragraph 6 of the reporter's syllabus) is:

> "Labor union performing functions as bargaining agent under the Railway Labor Act is not to be regarded as a wholly private association of individuals, free from all constitutional or statutory restraints to which public agencies are subjected."

Our statement, therefore, in the first of the reasons relied on for allowance of the writ (p. 10) is an understatement; and assertion would have been appropriate that the respondents have official federal status and that Reigel has been deprived of due process by persons acting under federal authority. At least, opponent's contention (p. 12) that "The question is a private rather than a public one" cannot be sustained.

Respondents' (3) above (convention and courts can give relief), overlooks incontrovertible facts which prove the

contrary; such as, that no relief which will permit Reigel to serve the balance of his term can be given when or after the Convention acts. Neither will what intra-organization remedies remain to him as a member be due process, because of delay, control of the convention by the President through his appointment of the hearing Board and numerous officers and other committees at the convention (Const. Art. 7, Sec. 5, p. 16) and prevention of Reigel standing for another term under claim of lack of eligibility [Art. 9, Sec. 4(a), p. 12; Art. 10, Sec. 3, p. 22]. Neither can the courts save the balance of his elective term after it has expired; nor, as a practical matter, make it possible for him to be elected for a fourth term. Respondents assertions are answered in Chafee, "Internal Affairs of Associations," 43 Harvard Law Review 993, 1019. The learned author says:

> "An appeal within the association would not be required if it would be an inadequate remedy for the member. Thus if the appellate body meets very infrequently, the delay amounts to a denial of justice. And when the association is acting wholly outside its powers, its appellate body is as incompetent to pass on the case as the tribunal of first instance, and the courts may as well take charge at once. The same result would follow if an adverse decision of the appellate body is a foregone conclusion."

At p. 1014, three tests are given to determine if expulsion was wrongful: (1) the rules and proceedings must not be contrary to natural justice; (2) the expulsion must have been in accordance with the rules; (3) the proceedings must have been free from malice (bona fide), and at p. 1015, the author observes that under his (1) the principle would probably be implied no one shall be a judge in his own case. According to all of these tests, expulsion here was illegal and wrongful.

As to (4) (action premature), we have already shown that the action was essentially to protect the term of office until complete title to it could be established. Nothing but an injunction temporary and final could accomplish that.

Not only, then, is the action not premature, but if it were, the judgment should have been a stay (our brief p. 15) or at worst only a dismissal without prejudice (id.). Answering respondents' assertions that

> "Should the convention uphold the subordinate tribunals, the courts will be open to redress whatever wrong or injury petitioner may be able to establish." (Br. pp. 2, 12),

we state no court can then redress the wrong and injury petitioner has sustained; and should it even attempt to do so, assertion of bar by general judgment of dismissal is sure to be vigorously urged.

Under V. A in respondents' brief, p. 9, it is contended

> "petitioner fails to cite any decision of any circuit court pertaining to or even referring to the issue on which this case was decided, the necessity of exhausting intra-association remedies before resorting to the courts."

But, this overlooks *Green* v. *Obergfell*, 121 F. (2d) 46, 55, decided by the Court of Appeals of the District of Columbia, cited in our brief, p. 14. This case cites with approval, as shown in the petition for rehearing (R. 180-181), *Fish* v. *Ruddell*, 51 F. (2d) 319, decided by the same court, and holds that where there are special circumstances showing injustice or illegal action, violation of contract obligations and invasion of property rights, the courts will intervene. This is in direct conflict on the same matter with the opinion in this case (R. 162),

> "Whether those who made the charges against him chose the appropriate course, we need not decide."

As to V. B (Br., p. 9), the Ohio cases there referred to are shown completely inapplicable in our brief (p. 11) and under *First* of the petition for rehearing below (R. 175, 177).

Nothing is cited in opposition to our Sixth (Br. p. 11) that the decision is in conflict with general law on the same matter and decisions and authorities cited (id. pp. 15-16). *Gallagher* v. *Monaghan,* 58 N. Y. Supp. (2d) 618, involving this very president, Harrison, is ignored, as are the decisions cited in that case;-to which may be added Section 63, p. 7 of *Oakes, "Organized Labor. . . ." Cosentino et al.* v. *Goldman,* 49 N. Y. Supp. (2d) 467, *Schouten* v. *Alpine,* 137 N. Y. Supp. 380, *Reilley* v. *Hogan,* 32 N. Y. Supp. (2d) 864, affirmed 36 id. 423.

As to respondents' V. E (p. 11) and the argument *ad hominem* that Reigel is guilty, we shall not enter on this divagation, further than to say, though unnecessarily, Reigel alleged in his complaint (R. 5 bot.) and amended and supplemental complaint (par. 16, R. 97) that the allegations made the basis for his dismissal by Harrison

> "are false, constitute a reflection on his character and were made because of ill will and antagonism to this plaintiff on the part of said Harrison."

What Reigel seeks is "due process" and the right to disprove these allegations before an independent and impartial tribunal.

Respectfull submitted,

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